



UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF:

Lower Passaic Study Area portion of the
Diamond Alkali Superfund Site

In and About Essex, Hudson, Bergen
and Passaic Counties, New Jersey

Alliance Chemical, Inc., et al.,

Settling Parties.

ADMINISTRATIVE SETTLEMENT
AGREEMENT AND ORDER ON
CONSENT FOR REMEDIAL
INVESTIGATION/FEASIBILITY
STUDY

U.S. EPA Region 2
CERCLA Docket No. 02-2007-2009

Amendment No. 1

Proceeding Under Sections 104, 107 and
122 of the Comprehensive
Environmental Response,
Compensation, and Liability Act, as
amended, 42 U.S.C. §§ 9604, 9607 and
9622

I. JURISDICTION AND GENERAL PROVISIONS

1. The Administrative Settlement Agreement and Order on Consent ("Settlement Agreement"), CERCLA Docket No. 02-2007-2009, was entered into by the United States Environmental Protection Agency ("EPA") and the respondents whose names are set forth in Appendix A ("Settling Parties"). The Settlement Agreement was fully executed and became effective on May 8, 2007. The Settlement Agreement concerns the completion of a remedial investigation and feasibility study ("RI/FS") for the Lower Passaic River Study Area portion of the Diamond Alkali Superfund Site ("Site") initiated by EPA and the reimbursement for future response costs incurred by EPA in connection with the RI/FS, as provided therein.

2. The Settlement Agreement was issued under the authority vested in the President of the United States by Sections 104, 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. §§ 9604, 9607 and 9622. This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2926 (Jan. 29, 1987), and further delegated to Regional Administrators on May 11, 1994, by EPA Delegations Nos. 14-14-C and 14-14-D. This authority was redelegated by the Regional Administrator of EPA Region II to the Director of the Emergency and Remedial Response Division by EPA Regional Delegations 14-14-C and 14-14-D dated November 23, 2004.

3. Pursuant to Paragraph 97(c) of the Settlement Agreement, to assure that funds are available to pay for performance of the Work, as that term is defined by the Settlement Agreement, the Settling Parties entered into a Trust Agreement establishing a trust for the benefit of EPA, in a form approved by EPA. The Trust Agreement was fully executed on May 10, 2007.

4. Paragraph 106 of the Settlement Agreement provides that the Settlement Agreement may be amended by mutual agreement of EPA and Settling Parties, and that amendments shall be in writing and shall be effective when signed by EPA. Section 14 of the Trust Agreement provides that the Trust Agreement may be amended only by an instrument in writing executed by the Grantors or the Grantors' Representative(s) and the Trustee, with the prior written consent of EPA.

5. EPA and the Settling Parties have agreed that it is mutually beneficial to amend the Settlement Agreement, to allow EPA to devote additional resources to overseeing and implementing the RI/FS, and otherwise incurring costs that are Future Response Costs as that term is defined in the Settlement Agreement. Accordingly, the other terms and conditions remaining fully in effect and not being altered in any way, EPA and the Settling Parties hereby agree to amend the Settlement Agreement as follows:

II. AMENDMENT

6. Paragraph 80 shall be amended to strike existing Paragraph 80.a.vi, and to insert new Paragraphs 80.a.vi - x, which shall read:

vi. Within thirty (30) days of receipt of a written demand from EPA (the "Oversight Demand"), Settling Parties shall make a payment to EPA of \$450,000, in accordance with Paragraph 80.a.ii. EPA will deposit the \$450,000 in the Diamond Alkali Superfund Site/Lower Passaic River Study Area Cooperating Parties Group RI/FS Special Account within the EPA Hazardous Substance Superfund (the "LPRSA CPG-lead RI/FS Special Account") and establish an account for employee billing within EPA's timekeeping and accounting systems so the RPM can charge directly to the LPRSA CPG-lead RI/FS Special Account. The RPM will charge any time that he or she spends in performing work that comprises Future Response Costs to the LPRSA CPG-lead RI/FS Special Account, and those costs, plus the associated indirect costs, will be deducted from the \$450,000. Each year, on or about the anniversary of EPA's receipt of the \$450,000 paid pursuant to this Paragraph, EPA will provide to the Settling Parties an accounting consisting of a SCORPIOS Report showing the RPM's direct and indirect costs for the applicable time period. EPA will not bill any of the costs of the RPM drawn directly from the LPRSA CPG-lead RI/FS Special Account to the Settling Parties pursuant to the billing procedure set forth in Paragraph 80.a.i.

vii. Other EPA employees performing work that meets the definition of Future Response Costs may also charge time directly to the LPRSA CPG-lead RI/FS Special Account. The direct costs so charged, and associated indirect costs, will be deducted from the LPRSA CPG-lead RI/FS Special Account and accounted for in the same manner as the costs charged directly by the RPM, as described in Paragraph 80.a.vi. The total hours charged to the LPRSA CPG-lead RI/FS Special Account by EPA employees other than the RPM will not exceed 500 hours per year, and the combined total of all time charged to the LPRSA CPG-lead RI/FS Special Account, under this Paragraph and Paragraph 80.a.vi, will not exceed 2080 hours per year.

viii. If EPA expends more than \$150,000 per year in direct and indirect costs for the RPM, as described in Paragraph 80.a.vi, EPA may request that Settling Parties make an additional payment into the LPRSA CPG-lead RI/FS Special Account to ensure that sufficient funds are present to cover three years of the RPM's direct and indirect costs, or a longer time if EPA and Settling Parties agree to extend this time period. If the expense of more than \$150,000 per year is attributable to charges by EPA employees other than the RPM, EPA will not request an additional payment under this Paragraph 80.a.viii.

ix. After three years, unless EPA and Settling Parties agree to extend this time period, EPA will perform a final accounting with respect to the \$450,000 paid by Settling Parties pursuant to Paragraph 80.a.vi. Any balance remaining from the prepaid amount may be applied to EPA's ongoing Future Response Costs and will be reflected in the final accounting described in Paragraph 80.a.x.

x. When EPA is no longer incurring Future Response Costs and all such costs have been billed and accounted for in EPA's cost accounting system, EPA will perform a final accounting showing all amounts paid by Settling Parties pursuant to Paragraphs 80.a.i, iv and vi, and all costs incurred by EPA, and EPA will give Settling Parties notice of the final total amount of Future Response Costs, accompanied by a SCORPIOS Report supporting these costs. If EPA determines that any Future Response Costs are still due and owing to EPA, EPA will send

Settling Parties a final bill requiring payment, pursuant to Paragraph 80.a.i. Settling Parties may contest payment of the final bill if they determine that EPA has made a mathematical error or if they believe EPA incurred excess costs as a direct result of an EPA action that was inconsistent with the NCP or outside the definition of Future Response. Such dispute, if any, shall be raised and resolved in the manner described under Section XV (Dispute Resolution). After any disputes concerning those costs are resolved, EPA will reduce the final bill by any unused amount of funds in the LPRSA CPG-lead RI/FS Special Account. If the unused amount of funds in the LPRSA CPG-lead RI/FS Special Account exceeds the final total amount of Future Response Costs, after all disputes are resolved, EPA will return any excess funds to the CPG.

7. Paragraph 98 shall be amended to read:

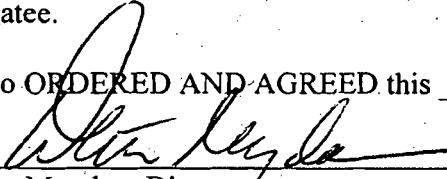
98. Settling Parties have selected a trust fund pursuant to a Trust Agreement as a Performance Guarantee, and with EPA's approval, Settling Parties have entered into the Trust Agreement and have submitted to EPA all executed and/or otherwise finalized instruments and other documents required in order to make the selected Performance Guarantee legally binding. Within fifteen (15) days of receipt of the Oversight Demand, Settling Parties shall enter into an amendment to the Trust Agreement, satisfactory in form and substance to EPA, as necessary to: (a) allow Settling Parties to pay the Oversight Demand from the trust fund; and (b) amend the schedule of payments to the trust fund required by Section 3(b) to provide that the fourth payment, to be made within three years and 90 days from the Effective Date of the Settlement Agreement, shall be \$9,450,000.

8. Appendix A to the Settlement Agreement shall be replaced with Appendix A to this Amendment.

III. EFFECTIVE DATE

This Amendment No. 1 to the Settlement Agreement shall be effective on the day that it is signed by the Director of the Emergency and Remedial Response Division of EPA, Region 2 or his delegatee.

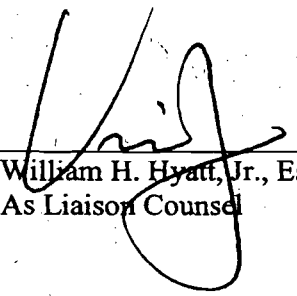
It is so ORDERED AND AGREED this 21st day of May, 2009.

BY: 
Walter Mugdan, Director
Emergency and Remedial Response Division
U.S. Environmental Protection Agency, Region 2

DATE: 5/21/2009

The Settling Parties to the Settlement Agreement, as set forth in Appendix A, consent to enter into this Amendment No. 1 and to be bound by its terms. The signatory identified below certifies that he is fully authorized to represent the Settling Parties that were signatories to the Settlement Agreement in this matter set forth in Appendix A; to agree to the terms and conditions of this Amendment No. 1 on behalf of those Settling Parties, and to bind those Settling Parties to all of the terms and conditions of this Amendment No. 1.

By:



William H. Hyatt, Jr., Esq.
As Liaison Counsel

5-13-09

Date

EFFECTIVE DATE: 5-21-2009

Appendix A Settling Parties

1. Alliance Chemical, Inc. on behalf of itself and Pfister Chemical, Inc.
2. Arkema, Inc.
3. Ashland Inc.
4. Atlantic Richfield Company
5. BASF Corporation, on its own behalf and on behalf of BASF Catalysts LLC
6. Belleville Industrial Center
7. Benjamin Moore & Co.
8. Bristol-Myers Squibb Company
9. CBS Corporation, a Delaware corporation, f/k/a Viacom Inc., successor by merger to CBS Corporation, a Pennsylvania corporation, f/k/a Westinghouse Electric Corporation
10. Celanese Ltd.
11. Chemtura Corporation and Raclaur, LLC as current and former owner of the property f/k/a Atlantic Industries
12. Chevron Environmental Management Company, for itself and on behalf of Texaco, Inc.
13. Coltec Industries
14. Conopco, Inc. d/b/a Unilever (as successor to CPC/Bestfoods, former parent of the Penick Corporation (facility located at 540 New York Avenue, Lyndhurst, NJ))
15. Covanta Essex Company
16. Croda, Inc.
17. DiLorenzo Properties Company on behalf of itself and the Goldman /Goldman/DiLorenzo Properties Partnerships
18. E. I. du Pont de Nemours and Company
19. Eden Wood Corporation
20. Elan Chemical Company
21. EPEC Polymers, Inc. on behalf of itself and EPEC Oil Company Liquidating Trust
22. Essex Chemical Corporation
23. Flexon Industries Corp.
24. Franklin-Burlington Plastics, Inc.
25. Garfield Molding Co., Inc.
26. General Electric Company
27. General Motors Corporation
28. Givaudan Fragrances Corporation (Fragrances North America)
29. Goodrich Corporation on behalf of itself and Kalama Specialty Chemicals, Inc.
30. Hercules Chemical Company, Inc.
31. Hess Corporation, on its own behalf and on behalf of Atlantic Richfield Company
32. Hexcel Corporation
33. Hoffmann-La Roche Inc. on its own behalf, and on behalf of its affiliate Roche Diagnostics
34. Honeywell International Inc.
35. ISP Chemicals LLC
36. ITT Corporation
37. Kao Brands Company

38. Leemilt's Petroleum, Inc. (successor to Power Test of New Jersey, Inc.), on its behalf and on behalf of Power Test Realty Company Limited Partnership and Getty Properties Corp., the General Partner of Power Test Realty Company Limited Partnership
39. Lucent Technologies Inc.
40. Mallinckrodt Inc.
41. National-Standard LLC
42. Newell Rubbermaid Inc., on behalf of itself and its wholly-owned subsidiaries Goody Products, Inc. and Berol Corporation (as successor by merger to Faber-Castell Corporation)
43. News Publishing Australia Ltd. (successor to Chris-Craft Industries)
44. Novelis Corporation (f/k/a Alcan Aluminum Corporation)
45. NPEC Inc.
46. Occidental Chemical Corporation (as successor to Diamond Shamrock Chemicals Company)
47. Otis Elevator Company
48. Pfizer, Inc.
49. Pharmacia Corporation (f/k/a Monsanto Company)
50. PPG Industries, Inc.
51. Public Service Electric and Gas Company
52. Purdue Pharma Technologies, Inc.
53. Quality Carriers, Inc. as successor to Chemical Leaman Tank Lines, Inc., its affiliates and parents
54. Reichhold, Inc.
55. Revere Smelting and Refining Corporation
56. Safety-Kleen Envirosystems Company by McKesson, and McKesson Corporation for itself
57. Sequa Corporation
58. Sun Chemical Corporation
59. Tate & Lyle Ingredients Americas, Inc. (f/k/a A.E. Staley Manufacturing Company, including its former division Staley Chemical Company)
60. Teva Pharmaceuticals USA, Inc. (f/k/a Biocraft Laboratories, Inc.)
61. Teval Corporation
62. Textron Inc.
63. The BOC Group, Inc.
64. The Hartz Consumer Group, Inc., on behalf of The Hartz Mountain Corporation
65. The Newark Group
66. The Sherwin-Williams Company
67. The Stanley Works
68. Three County Volkswagen
69. Tiffany and Company
70. Vertellus Specialties Inc. f/k/a Reilly Industries, Inc.
71. Vulcan Materials Company
72. Wyeth, on behalf of Shulton, Inc.